



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155

IN REPLY REFER TO:
3592

UTU-087809 thru UTU-087818
(UT-932)

m/045/002
AUG 15 2002

CERTIFIED MAIL--Return Receipt Requested

Mr. Greg Foy
Superintendent
Reilly Industries
Reilly Wendover
Wendover, Utah 84401

RECEIVED
AUG 19 2002
DIVISION OF
OIL, GAS AND MINING

Re: Mining Plan for the Federal Potassium Leases UTU-087809 thru UTU-087813

NOTICE OF NONCOMPLIANCE

During the last inspection of your operation, the Bureau of Land Management (BLM) noted mining activities on Federal Potassium Leases UTU-087809 thru UTU-087813 that were not in compliance with your approved mining plan submitted to BLM on May 3, 1974.

The Federal regulations pertaining to your leases at 43 CFR 3592 provide that no operations shall be conducted except as provided in an approved plan. The inspectors noted that your operations have deviated significantly from the approved plan. We have no recent record of Reilly Wendover submitting any production maps in accordance with 43 CFR 3592.3. This noncompliance results from your failure to submit a modification to the approved plan and obtain approval prior to making changes in your operation. Reilly Wendover must obtain approval for any modification to the mining plan **prior** to modifying operations. The regulations, 43 CFR 3592.1(d)(1), provide that, "To obtain approval of an exploration or mining plan modification, the operator/lessee shall submit a written statement of the proposed modification and the justification for such modification. Any proposed exploration or mining plan modifications(s) shall **not be implemented** unless previously approved by the authorized officer." [Emphasis added.]

Requirements to Correct the Mining Plan Noncompliance:

1. Submit a map of the current operations showing the locations of all ditches and ponds that are part of your current operation. In addition, the function of the ditches must be noted on the map. **You have 10 working days from the receipt of this letter to submit this to BLM, Utah State Office.**
2. Submit a mining plan consistent with the regulations at 43 CFR 3592 (enclosed) that reflect your current operation (including recent changes). **This must be submitted to our office for approval within 30 days of the receipt of this notice.** If you have any questions regarding

what must be included in this plan, please contact Mr. Stan Perkes, Mining Engineer, at (801) 539-4063.

Compliance Failure: Failure to comply with this Notice of Noncompliance will result in an order to cease operations in accordance with 43 CFR 3598.4(a).

Appeal Rights

Following the compliance period, you then have 30 calendar days to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office within 30 calendar days following at the end of the compliance period. The appellant has the burden of showing that the decision appealed from is in error.


If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and the petition for a stay must also be submitted to the Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards;

- (1) The relative harm to the parties if a stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of the immediate and irreparable harm if the stay is not granted, and;
- (4) Whether the public interest favors granting the stay.

Sincerely,

 *James F. Kohler*
James F. Kohler
Chief, Solid Minerals Branch

Enclosures

1. 3590 Regulations
2. Form 1842-1

cc: Doug Jensen, Utah Division of Oil, Gas and Mining, (w/o enc.)

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